WA 244/2006
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI
THE HON'BLE SMTI. JUSTICE ANIMA HAZARIKA.
JUDGMENT AND ORDER (oral)

Ranjan Gogoi, J.

1. The challenge in the present writ appeal is against the judgment and order dated 8.6.2006 passed in WP(c) No.7411 of 2005 dismissing the writ petition filed by the present appellants and three others. Aggrieved, three of the writ petitioners i.e. the present appellants are before this Court in appeal.

2. The facts of the case have been elaborately recited by the learned Single Judge in the order dated 8.6.2006. Hence the same need not be reiterated in our present order. We, therefore, propose to indicate only the core facts which have relevance to the issues arising for our consideration which issues we will attempt to summarise thereafter.

3. The appellants alongwith the three other writ petitioners and some others were appointed in the post of Asstt. Manager, Industries Department under Regulation 3(f) of the Assam Public Service Commission (Limitation & Functions) Regulation, 1951. This was sometime in the year 1992. Subsequently, they underwent a selection held by the Public Service Commission pursuant to an advertisement issued for vacant posts of Asstt. Manager. In the said selection, apart from the appellants, there were fresh candidates who did not have any previous record of service under Regulation 3(f). The Public Service Commission made its recommendations on 10.10.94 which included the name of the appellants and sent the same to the State Government for further action. Thereafter, by order dated 22.6.95 the appellants along with other selected candidates (Respondents 36 to 45) were appointed in the post of Asstt. Manager. Insofar as the appellants are concerned, their appointments were made effective from 10.10.94 i.e. the date of recommendation of the Public Service Commission.

4. The Respondent Nos.6 to 32 in the writ petition as well as in the writ appeal are the promotees who were promoted to the post of Asstt. Manager by order dated 7.4.95. The said promotions were made on the recommendation of a duly constituted Departmental Promotion Committee (DPC) which held its deliberations under the provisions of the Assam Industries Service (Recruitment and Promotion to the Posts) Order, 1989 which was holding the field at the relevant point of time. Thereafter, the said promotions which were made under Regulation 4(d) of the Assam Public Service Commission (Limitation & Functions) Regulation, 1951 were regularized on the basis of the recommendations of the Public Service Commission by Govt. order dated 31.5.96.

5. On the aforesaid facts the tussle between the parties is with regard to who between the direct recruits and promotees would be senior. The seniority list published at different points of time reflected the changing attitude of the Government. However, in the final seniority list published in the year 2003 the promotee respondents having been shown to be senior the writ petition in question was filed.

6. The learned Single Judge hearing the writ petition took the view that as the initial appointment of the appellants was under Regulation 3(f) and also without any selection the said appointments were not made under the Rules or Service Order in force as the case may be. Therefore, relying on several judgments of the Apex Court referred to in the impugned judgment, particularly the decision in the case of Direct Recruit Class-II Engg. Officers' Assn. Vs. State of Maharastra, reported in (1990) 2 SCC 715 and in the case of State of West Bengal vs. Aghore Nath De, reported in (1993) 3 SCC 371, the learned Judge took the view tha

t the earlier period of service rendered under Regulation 3(f) cannot be counted to the benefit of the appellants (writ petitioners).
The further contention raised on behalf of the appellants (writ petitioners) before the learned Single Judge was that if in the case of the appellants it is the date of the order of regular appointment which would be relevant so must be in the case of the respondents who were regularly promoted by Govt. order dated 31.5.1996. The aforesaid question was negatived by the learned Single Judge by recording that while in the case of the appellants (writ petitioners) their initial appointments were without selection and therefore not under the Rules, the promotion of the private respondents were after selection as contemplated by the Service Order in force. On the aforesaid view the learned Single Judge thought it correct to hold that the promotees having been promoted to the post of Asstt. Manager under the Rules earlier than the appellants (writ petitioners) it is the promotees who would enblock be senior to the direct recruits. Reference was also made to the provisions of the Service Order in force which contemplated that in the event of direct recruitment and promotions taking place in the same calendar year it is the promotees who would enblock rank senior to the direct recruits.

7. We have elaborately considered the judgment of the learned Single Judge presently under challenge and the arguments advanced by Sri I. Choudhury, learned counsel for the appellants.

8. The facts of the case make it abundantly clear that the appellants entered service by virtue of appointments made under Regulation 3(f) of the Assam Public Service Commission (Limitation & Functions) Regulation, 1951. An appointment made under Regulation 3(f) and without any selection cannot be construed to be an appointment under the Rules which is the condition precedent if the period of ad hoc service is to be taken into account for grant of benefit of seniority. This is the ratio of the judgment in the case of Direct Recruit Class-II Engg. Officers' Assn (supra) as explained in State of West Bengal vs. Aghore Nath De (supra). The recommendation of the Public Service Commission in the case of the appellants was made on 10.10.94 and accepted by the Govt. on 22.6.95. The grant of seniority with effect form 10.10.94 has the effect of taking into account the period of service rendered by virtue of an appointment not under the Rules. On the state of law as existing the same could not have been so done. We, therefore, find no reason to take a view different from what has been recorded by the learned Single Judge on the said aspect of the case.

9. There is another aspect of the matter which would require a brief mention. In the narration of facts it has been mentioned that in the process of direct recruitment by the Assam Public Service Commission, apart from the appellants who had rendered service under Regulation 3(f) there were other fresh candidates. Some of such fresh candidates e.g. Respondent Nos.36 and 37 were assigned merit positions higher than the appellants. If that be so, the grant of seniority to the appellants with effect from 10.10.94 would be doing violence to the order of merit arranged by the Public Service Commission. Two different standards in violation of the order of merit, would emanate in respect of the candidates selected by the Public Service Commission and included in the same select list in order of merit. Such a course of action, surely, cannot have the approval of the Court.

10. The appellants have contended that if their service is to be counted from the date of their regular appointment i.e. 22.6.95, the same standard must be adopted in the case of the promotees who were given regular promotion by order dated 31.5.96. The contention advanced is attractive but on closer scrutiny there is room to doubt the accuracy and acceptance thereof. In contrast to the appellants who entered service under Regulation 3(f) and without selection the promotees earned their promotion after being recommended by the duly constituted Departmental Promotion Committee. The said promotions, therefore, were made under the Rules or Service Order in force whereas the same is not the position in the case

of the appellants. The promotion of the private respondent Nos.6 to 32 were made on 7.4.95 under Regulation 4(d) of the Assam Public Service Commission (Limitation & Functions) Regulation, 1951 which needed to be regularized within a year. The Public Service Commission approved the sid promotion on 11.4.96 whereafter the formal notification was issued by the Govt. on 31.5.96.

11. That apart, under the relevant provision of the Service Order, between the direct recruits and promotees coming into service in the same calendar year it is the promotees who are required to be put in the seniority positions above the direct recruits. In the present case, the Court has already held that the promotions of the respondent Nos.6 to 32 were in accordance with the provisions of the Service Order in force. If that be so the Court fails to see any reason why the mandate contained in the Service Order with regard to seniority between the direct recruits and promotees should not be given effect to.

11. For the aforesaid reasons, we are unable to find any point of substance in this appeal so as to warrant out interference with the view taken by the learned Single Judge. We, therefore, dismiss the appeal leaving the parties to bear their own costs.